

CC Docket 96-98
[REDACTED]

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 12 1998

Clarification of the Commission's Rules)
Regarding Reciprocal Compensation for)
Information Service Provider Traffic)

CCB/CPD 97-30

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

I. INTRODUCTION

Cincinnati Bell Telephone Company ("CBT") submits these comments in response to the Commission's July 2, 1997 request for comments in the above-captioned proceeding.¹ The Commission seeks comment on the Association for Local Telecommunications' ("ALTS") letter² requesting clarification that nothing in the Local Competition Order³ requires information service traffic to be treated differently than other local traffic is handled under current reciprocal compensation agreements in situations in which local calls to enhanced service providers ("ESP") are exchanged between incumbent local exchange carriers and CLECs. CBT submits that the ALTS request for clarification should be rejected because ESP

¹ CBT also fully supports the comments being filed in this proceeding by the United States Telephone Association ("USTA").

² Letter from ALTS to the Commission, dated June 20, 1997.

³ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), stayed in part pending judicial review sub nom. Iowa Utils. Bd. v. FCC, 109 F3d 418 (8th Cir. 1996).

traffic is not local traffic and furthermore, this is not the proper vehicle for addressing the issue.

II. ESP TRAFFIC IS INTERSTATE TRAFFIC AND THEREFORE NOT ENTITLED TO RECIPROCAL COMPENSATION

In claiming that ESP traffic is entitled to reciprocal compensation, ALTS incorrectly reasons that the current access charge exemption for ESP traffic somehow changes the jurisdictional nature of the traffic from interstate to local. The fact that ESPs are exempt from access charges for policy reasons does not change the jurisdictional nature of the traffic. In creating the ESP exemption, the Commission did not determine that ESP traffic is local. Instead, it merely allowed ESPs to purchase services from local tariffs. ESPs were classified as "end-users" only as a means of allowing them to purchase out of intrastate tariffs rather than access tariffs, on a temporary basis to assist the nascent ESP industry during its formative years.⁴ This classification for access charge purposes has no effect on the essential nature of ESP traffic. In fact, even the Commission continues to recognize that ESPs originate and terminate interstate calls, even though they are exempt from access charges.⁵ Since ESPs are not truly end-users, but instead originate and terminate calls to interstate locations, as do IXC's, reciprocal compensation for termination of ESP traffic should not apply. The ALTS' request for expedited letter clarification is simply a blatant attempt to bootstrap the ESP exemption into a justification for

⁴ Local end-user tariff rates provided, at the time, a reasonable surrogate for access charges. In today's evolving competitive world, that exemption cannot continue to be sustained as rates move closer to costs.

⁵ In the Matter of Access Charge Reform, CC Docket No. 96-262 NPRM. released December 24, 1996 at ¶ 284.

treating interexchange traffic as local traffic in order to increase their receipts from reciprocal compensation agreements. The Commission should ignore ALTS' creative interpretation of the facts and reaffirm that reciprocal compensation for ESP traffic is not consistent with the 1996 Act nor the Commission's interconnection rules.

From a policy perspective, ALTS' proposal is seriously flawed since it tries to use an exemption intended for one specific purpose (i.e., to encourage the development of the ESP industry), to assist new entrants into the local exchange market. The benefits of the ALTS' proposal would accrue solely to new entrants, while the incumbent LECs would not only continue to forgo the revenue from access charges, but also would be required to pay for carrying ESP traffic over their networks. Allowing new entrants to siphon off revenue intended to support the local exchange infrastructure undermines the fundamental purposes of reciprocal compensation and further shifts costs to other customers.

III. A REQUEST FOR EXPEDITED LETTER CLARIFICATION IS NOT A SUFFICIENT BASIS FOR CHANGING A COMMISSION RULE

As more fully explained in USTA's comments, it would be inappropriate for the Commission to address the issue raised by ALTS through an "expedited letter clarification." First of all, the time period for seeking reconsideration of the Local Competition Order has run. Second, there is absolutely no basis in the record of CC Docket No. 96-98 upon which the Commission could conclude that ESP traffic is local. Indeed, the evidence presented in that proceeding clearly supports the conclusion that ESP traffic is interstate. In addition, ALTS' allegations of unreasonable discrimination on the part of certain incumbent LECs cannot be

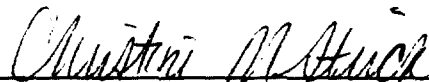
addressed by an "expedited letter clarification." The appropriate forum for raising such carrier-specific discrimination claims is in the context of a complaint proceeding.

III. CONCLUSION

CBT requests that the Commission reject ALTS' request for clarification. If the Commission believes a response to the ALTS letter is necessary, CBT asserts that the Commission should reaffirm that ISP/ESP traffic is interstate in nature and is therefore not subject to the reciprocal compensation obligations.

Respectfully submitted,

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